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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

ANDREW MARSHALL and all other similarly situated, Plaintiff, v. BONDED ADJUSTMENT COMPANY, a Washington Corporation, and SPOKANE EMERGENCY PHYSICIANS, P.S., a Washington Corporation, Defendants. } Case No.: CV-11-022-RMP } PLAINTIFF'S MEMORANDUM IN SUPPORT OF PLAINTIFF AND DEFENDANT SPOKANE EMERGENCY PHYSICIANS' JOINT MOTION TO CONTINUE THE MAY 7, 2012 TRIAL DATE, SET A SCHEDULING CONFERENCE HEARING AND ENTER A NEW SCHEDULING ORDER }

On April 14, 2011, a scheduling conference hearing was held. Attorney for Defendant Bonded Adjustment Company Jeffrey Hasson failed to appear. However, Mr. Hasson had agreed to the Joint Certificate filed with the Court. (ECF

1 No. 15). No party had requested bifurcation of the Discovery. Plaintiff
2 immediately sent discovery after the FRCP 26(f) conference as allowed by the
3 rules. Fed. Rule Civil Procedure, Rule 26(f). Defendant has refused to answer the
4 discovery.

5 First Bonded obtained a Protective Order on expedited review, allowing
6 Bonded more time to answer (based on a claim that a vacation interfered with
7 counsel's inability to comply with the time limits in the Federal Rules of
8 Procedure). Then instead of answering, Bonded filed another Motion for Protective
9 Order to avoid answering (set for July 1 without oral argument). ECF No. 41.
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11

12 *Wal-Mart Stores, Inc. v. Dukes*, --- S.Ct. ----, 2011 WL 2437013 U.S., 2011
13 makes clear the need for discovery since some factual basis for class certification
14 must now be shown. This newly announced standard ends any claims for
15 bifurcation of discovery in a class case. Mr. Hasson refused to consider
16 participating in preparing a new Joint Certificate regarding scheduling and will not
17 agree to a continuance of any deadline of more than ninety (90) days. Bonded still
18 has not answered the discovery and still does not seek bifurcation. The refusal to
19 respond to discovery is a tactic to make the class certification deadline (July 31,
20 2011, ECF No. 26, p. 3) impossible to meet and otherwise frustrate Plaintiff's
21 orderly prosecution of their case.
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1 Spokane Emergency Physicians is diligently working through (running
2 searches) (approximately 12,000 electronic pages related to 290,000 patients) the
3 records to identify persons who may meet the putative class definition in response
4 to Plaintiff's Requests for Production. Plaintiff agreed that since Defendant is
5 communicating and diligently attempting to properly respond more time to respond
6 is appropriate.

7
8 Under the current trial schedule, the Plaintiff must file for class certification
9 no later than July 31, 2011. That deadline is no longer possible¹ and will need to be
10 extended. An extension of the class certification deadline impacts other deadlines
11
12 _____

13 ¹Without the class discovery, it is not practicable to move for class certification.
14

15 *Wal-Mart Stores, Inc. v. Dukes.* On April 1, 2011, the Plaintiff served Defendant
16 BAC with written discovery related to the class elements numerosity, typicality
17 and commonality. Fed. R. Civ. P. 23. On April 26, 2011 BAC made an expedited
18 motion for an extension of time to answer the discovery. ECF No. 27. On May 4,
19 2011, the Court granted BAC extension of time to answer and ordered BAC to
20 answer by May 31, 2011. ECF No. 36. On May 31, 2011, BAC did not answer the
21 class discovery, but instead moved for a Protective Order. The Court is set to hear
22 that motion on July 1, 2011.
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24

1 requiring additional extensions. Rather than deal with each extension in a
2 piecemeal fashion, judicial economy, and fairness requires resetting the trial date
3 and entering a new scheduling order.
4

5 Plaintiff and Defendant Spokane Emergency Physicians filed an Amended
6 Joint Certification requesting a trial date in the last two weeks of October 2012,
7 with a new class certification deadline of December 31, 2011. The parties agree
8 that the Court's usual trial schedule is otherwise appropriate based on a trial date of
9 later in October 2012. Plaintiff and Defendant Spokane Emergency Physicians
10 request a second scheduling conference.
11
12 Dated this the 29th day of June, 2011.

13 *Michael D. Kinkley, P.S.*

14 *Michael D. Kinkley, P.S.*

15 s/Michael D. Kinkley
16 Michael D. Kinkley
WSBA # 11624
17 Attorney for Plaintiffs

18 s/Scott M. Kinkley
19 Scott M. Kinkley
WSBA # 42434
20 Attorney for Plaintiffs

21 *Kirk D. Miller, P.S.*

22 s/Kirk D. Miller
Kirk D. Miller
WSBA # 40025
23 Attorney for Plaintiffs

1 CM/ECF CERIFICATE OF SERVICE
2

3 I hereby certify that on the 29th day of June, 2011, I electronically filed the
4 foregoing with the Clerk of the Court using the CM/ECF System which will send
5 notification of such filing to the following:
6

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